

AMENDED IN SENATE FEBRUARY 13, 2012

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 246

Introduced by Assembly Member Wieckowski

(Coauthors: Assembly Members Alejo, Bonilla, and Williams)

February 3, 2011

~~An act to amend Sections 13223, 13350, 13361, 13385, and 13386 of the Water Code, relating to water quality. An act to repeal and amend Sections 17053.80 and 23623 of the Revenue and Taxation Code, relating to tax, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 246, as amended, Wieckowski. ~~Water quality: enforcement. Income taxes: credit: hiring.~~

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, with a maximum cumulative credit of \$400,000,000 for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, redefine “qualified employer” to mean a disabled veteran business enterprise, a disadvantaged business enterprise, a microbusiness, or a small business, as defined. This bill would, for taxable years beginning on or after January 1, 2012, allow a credit in

the amount of \$4,500 for each net increase in full-time employees, who are paid qualified wages of less than \$16 per hour and a credit in the amount of \$9,100 for each net increase in full-time employees, who are paid qualified wages of \$16 or more per hour, as provided.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~(1) The Porter-Cologne Water Quality Act authorizes each California regional water quality control board to delegate certain powers to its executive officer. That authorization, except as specified, excludes the delegation to its executive officer of the power of application to the Attorney General for judicial enforcement.~~

~~This bill would delete that exclusion, and, instead, specifically authorize a regional board, commencing January 1, 2012, to delegate to its executive officer the authority to apply for judicial enforcement to the Attorney General, a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county. The bill would authorize a district attorney or a city attorney to pursue judicial enforcement only after approval by the Attorney General of an application for judicial enforcement.~~

~~(2) The act requires every civil action brought under its provisions to be brought by the Attorney General in the name of the people, upon request of the State Water Resources Control Board or a regional board; authorizes those actions to be joined or consolidated; and provides in prescribed circumstances for petition to a court for relief.~~

~~This bill, with specified exceptions, would additionally authorize a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county, upon approval by the Attorney General, to bring civil actions under the act, and would make conforming changes to those petition provisions.~~

Vote: ~~majority~~ $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 17053.80 of the Revenue and Taxation*
- 2 *Code, as added by Section 3 of Chapter 10 of the Third*
- 3 *Extraordinary Session of the Statutes of 2009, is repealed.*

1 ~~17053.80.— (a) For each taxable year beginning on or after~~
2 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
3 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
4 ~~for each net increase in qualified full-time employees, as specified~~
5 ~~in subdivision (c), hired during the taxable year by a qualified~~
6 ~~employer.~~

7 ~~(b) For purposes of this section:~~

8 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
9 ~~to divorce, or any other transfer, whether or not for consideration.~~

10 ~~(2) “Qualified full-time employee” means:~~

11 ~~(A) A qualified employee who was paid qualified wages by the~~
12 ~~qualified employer for services of not less than an average of 35~~
13 ~~hours per week.~~

14 ~~(B) A qualified employee who was a salaried employee and~~
15 ~~was paid compensation during the taxable year for full-time~~
16 ~~employment, within the meaning of Section 515 of the Labor Code,~~
17 ~~by the qualified employer.~~

18 ~~(3) A “qualified employee” shall not include any of the~~
19 ~~following:~~

20 ~~(A) An employee certified as a qualified employee in an~~
21 ~~enterprise zone designated in accordance with Chapter 12.8~~
22 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
23 ~~Government Code.~~

24 ~~(B) An employee certified as a qualified disadvantaged~~
25 ~~individual in a manufacturing enhancement area designated in~~
26 ~~accordance with Section 7073.8 of the Government Code.~~

27 ~~(C) An employee certified as a qualified employee in a targeted~~
28 ~~tax area designated in accordance with Section 7097 of the~~
29 ~~Government Code.~~

30 ~~(D) An employee certified as a qualified disadvantaged~~
31 ~~individual or a qualified displaced employee in a local agency~~
32 ~~military base recovery area (LAMBRA) designated in accordance~~
33 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
34 ~~7 of Title 1 of the Government Code.~~

35 ~~(E) An employee whose wages are included in calculating any~~
36 ~~other credit allowed under this part.~~

37 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
38 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
39 ~~employees.~~

~~(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.~~

~~(6) “Annual full-time equivalent” means either of the following:~~

~~(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.~~

~~(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.~~

~~(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:~~

~~(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).~~

~~(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year.~~

~~(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions~~

1 of subdivision (f) of Section 17276, without application of
2 paragraph (7) of that subdivision, shall apply.

3 (g) (1) (A) Credit under this section and Section 23623 shall
4 be allowed only for credits claimed on timely filed original returns
5 received by the Franchise Tax Board on or before the cut-off date
6 established by the Franchise Tax Board.

7 (B) For purposes of this paragraph, the cut-off date shall be the
8 last day of the calendar quarter within which the Franchise Tax
9 Board estimates it will have received timely filed original returns
10 claiming credits under this section and Section 23623 that
11 cumulatively total four hundred million dollars (\$400,000,000)
12 for all taxable years.

13 (2) The date a return is received shall be determined by the
14 Franchise Tax Board.

15 (3) (A) The determinations of the Franchise Tax Board with
16 respect to the cut-off date, the date a return is received, and whether
17 a return has been timely filed for purposes of this subdivision may
18 not be reviewed in any administrative or judicial proceeding

19 (B) Any disallowance of a credit claimed due to a determination
20 under this subdivision, including the application of the limitation
21 specified in paragraph (1), shall be treated as a mathematical error
22 appearing on the return. Any amount of tax resulting from such
23 disallowance may be assessed by the Franchise Tax Board in the
24 same manner as provided by Section 19051.

25 (4) The Franchise Tax Board shall periodically provide notice
26 on its Web site with respect to the amount of credit under this
27 section and Section 23623 claimed on timely filed original returns
28 received by the Franchise Tax Board.

29 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
30 or procedures necessary or appropriate to carry out the purposes
31 of this section, including any guidelines regarding the limitation
32 on total credits allowable under this section and Section 23623
33 and guidelines necessary to avoid the application of paragraph (2)
34 of subdivision (f) through split-ups, shell corporations, partnerships,
35 tiered ownership structures, or otherwise.

36 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
37 Division 3 of Title 2 of the Government Code does not apply to
38 any standard, criterion, procedure, determination, rule, notice, or
39 guideline established or issued by the Franchise Tax Board
40 pursuant to this section.

~~(i) This section shall remain in effect only until December 1 of the calendar year after the year of the cut-off date, and as of that December 1 is repealed.~~

SEC. 2. Section 17053.80 of the Revenue and Taxation Code, as added by Section 3 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

17053.80. (a) (1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2012, there shall be allowed as a credit against the "net tax," as defined in Section 17039, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(2) For each taxable year beginning on or after January 1, 2012, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount as specified in subparagraphs (A), (B), and (C) for each net increase in qualified full-time employees, or portion thereof, as specified in subdivision (c), for the taxable year by the qualified employer.

(A) For each net increase in qualified full-time employees, or portion thereof, who are paid qualified wages of less than sixteen dollars (\$16) per hour, or an equivalent amount if the qualified wages are paid other than on an hourly basis, four thousand five hundred dollars (\$4,500).

(B) For each net increase in qualified full-time employees, or portion thereof, who are paid qualified wages of sixteen dollars (\$16) per hour or more, or an equivalent amount if paid other than on an hourly basis, nine thousand one hundred dollars (\$9,100).

(C) If the net increase in qualified full-time employees for a taxable year, as determined under subdivision (c), is less than the sum of the net increase in qualified full-time employees determined under subparagraphs (A) and (B), the amount of credit allowed shall equal the net increase in qualified full-time employees determined under subdivision (c) multiplied by the amount under subparagraph (A) or (B), depending on which net increase in qualified full-time employees calculated under that subparagraph is greater than zero.

(D) A credit shall only be allowed if the qualified employer has a net increase in qualified full-time employees for the taxable year, as determined under subdivision (c).

(b) For purposes of this section:

1 (1) "Acquired" includes any gift, inheritance, transfer incident
2 to divorce, or any other transfer, whether or not for consideration.

3 (2) "Qualified full-time employee" means:

4 (A) A qualified employee who was paid qualified wages *during*
5 *the taxable year* by the qualified employer for services of not less
6 than an average of 35 hours per week.

7 (B) A qualified employee who was a salaried employee and
8 was paid compensation during the taxable year for full-time
9 employment, within the meaning of Section 515 of the Labor Code,
10 by the qualified employer.

11 (3) A "qualified employee" shall not include any of the
12 following:

13 (A) An employee certified as a qualified employee in an
14 enterprise zone designated in accordance with Chapter 12.8
15 (commencing with Section 7070) of Division 7 of Title 1 of the
16 Government Code.

17 (B) An employee certified as a qualified disadvantaged
18 individual in a manufacturing enhancement area designated in
19 accordance with Section 7073.8 of the Government Code.

20 (C) An employee certified as a qualified employee in a targeted
21 tax area designated in accordance with Section 7097 of the
22 Government Code.

23 (D) An employee certified as a qualified disadvantaged
24 individual or a qualified displaced employee in a local agency
25 military base recovery area (LAMBRA) designated in accordance
26 with Chapter 12.97 (commencing with Section 7105) of Division
27 7 of Title 1 of the Government Code.

28 (E) An employee whose wages are included in calculating any
29 other credit allowed under this part.

30 (4) ~~"Qualified"~~ (A) *For taxable years beginning on or after*
31 *January 1, 2009, and before January 1, 2012, "qualified employer"*
32 *means a taxpayer that, as of the last day of the preceding taxable*
33 *year, employed a total of 20 or fewer employees.*

34 (B) *For taxable years beginning on or after January 1, 2012,*
35 *"qualified employer" means an employer that as of the last day*
36 *of the preceding taxable year and the last day of the current taxable*
37 *year, was any of the following:*

38 (i) A "disabled veteran business enterprise" as defined in
39 paragraph (7) of subdivision (b) of Section 999 of the Military and
40 Veterans Code.

1 (ii) A “disadvantaged business enterprise” as defined in
2 subdivision (f) of 2051 of the Public Contract Code.

3 (iii) A “microbusiness” as defined in paragraph (2) of
4 subdivision (d) of Section 14837 of the Government Code.

5 (iv) A “small business” as defined in paragraph (1) of
6 subdivision (d) of Section 14837 of the Government Code.

7 (5) “Qualified wages” means wages subject to Division 6
8 (commencing with Section 13000) of the Unemployment Insurance
9 Code.

10 (6) “Annual full-time equivalent” means either of the following:

11 (A) In the case of a full-time employee paid hourly qualified
12 wages, “annual full-time equivalent” means the total number of
13 hours worked for the taxpayer by the employee (not to exceed
14 ~~2,000~~ 1,820 hours per employee) divided by ~~2,000~~ 1,820.

15 (B) In the case of a salaried full-time employee, “annual
16 full-time equivalent” means the total number of weeks worked for
17 the taxpayer by the employee divided by 52.

18 (c) The net increase in qualified full-time employees of a
19 qualified employer shall be determined as provided by this
20 subdivision:

21 (1) (A) The net increase in qualified full-time employees shall
22 be determined on an annual full-time equivalent basis by
23 subtracting from the amount determined in subparagraph (C) the
24 amount determined in subparagraph (B).

25 (B) The total number of qualified full-time employees employed
26 in the preceding taxable year by the taxpayer and by any trade or
27 business acquired by the taxpayer during the current taxable year.

28 (C) The total number of *qualified* full-time employees employed
29 in the current taxable year by the taxpayer and by any trade or
30 business acquired during the current taxable year.

31 (2) For taxpayers who first commence doing business in this
32 state during the taxable year, the number of *qualified* full-time
33 employees for the immediately preceding prior taxable year shall
34 be zero.

35 (d) In the case where the credit allowed by this section exceeds
36 the “net tax,” the excess may be carried over to reduce the “net
37 tax” in the following year, and succeeding seven years if necessary,
38 until the credit is exhausted.

1 (e) Any deduction otherwise allowed under this part for qualified
2 wages shall not be reduced by the amount of the credit allowed
3 under this section.

4 (f) For purposes of this section:

5 (1) All employees of the trades or businesses that are treated as
6 related under either Section 267, 318, or 707 of the Internal
7 Revenue Code shall be treated as employed by a single taxpayer.

8 (2) In determining whether the taxpayer has first commenced
9 doing business in this state during the taxable year, the provisions
10 of subdivision (f) of Section ~~47276~~ 17276.20, without application
11 of paragraph (7) of that subdivision, shall apply.

12 (g) (1) (A) Credit under this section and Section 23623 shall
13 be allowed only for credits claimed on timely filed original returns
14 received by the Franchise Tax Board on or before the cut-off date
15 established by the Franchise Tax Board.

16 (B) For purposes of this paragraph, the cut-off date shall be the
17 last day of the calendar quarter within which the Franchise Tax
18 Board estimates it will have received timely filed original returns
19 claiming credits under this section and Section 23623 that
20 cumulatively total four hundred million dollars (\$400,000,000)
21 for all taxable years.

22 (2) The date a return is received shall be determined by the
23 Franchise Tax Board.

24 (3) (A) The determinations of the Franchise Tax Board with
25 respect to the cut-off date, the date a return is received, and whether
26 a return has been timely filed for purposes of this subdivision may
27 not be reviewed in any administrative or judicial proceeding.

28 (B) Any disallowance of a credit claimed due to a determination
29 under this subdivision, including the application of the limitation
30 specified in paragraph (1), shall be treated as a mathematical error
31 appearing on the return. Any amount of tax resulting from such
32 disallowance may be assessed by the Franchise Tax Board in the
33 same manner as provided by Section 19051.

34 (4) The Franchise Tax Board shall periodically provide notice
35 on its *Internet* Web site with respect to the amount of credit under
36 this section and Section 23623 claimed on timely filed original
37 returns received by the Franchise Tax Board.

38 (h) (1) The Franchise Tax Board may prescribe rules,
39 guidelines, or procedures necessary or appropriate to carry out the
40 purposes of this section, including any guidelines regarding the

1 limitation on total credits allowable under this section and Section
2 23623 and guidelines necessary to avoid the application of
3 paragraph (2) of subdivision (f) through split-ups, shell
4 corporations, partnerships, tiered ownership structures, or
5 otherwise.

6 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
7 Division 3 of Title 2 of the Government Code does not apply to
8 any standard, criterion, procedure, determination, rule, notice, or
9 guideline established or issued by the Franchise Tax Board
10 pursuant to this section.

11 (i) This section shall remain in effect only until December 1 of
12 the calendar year after the year of the cut-off date, and as of that
13 December 1 is repealed.

14 *SEC. 3. Section 23623 of the Revenue and Taxation Code, as*
15 *added by Section 8 of Chapter 10 of the Third Extraordinary*
16 *Session of the Statutes of 2009, is repealed.*

17 ~~23623. (a) For each taxable year beginning on or after January~~
18 ~~1, 2009, there shall be allowed as a credit against the "tax," as~~
19 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
20 ~~net increase in qualified full-time employees, as specified in~~
21 ~~subdivision (c), hired during the taxable year by a qualified~~
22 ~~employer.~~

23 ~~(b) For purposes of this section:~~

24 ~~(1) "Acquired" includes any gift, inheritance, transfer incident~~
25 ~~to divorce, or any other transfer, whether or not for consideration.~~

26 ~~(2) "Qualified full-time employee" means:~~

27 ~~(A) A qualified employee who was paid qualified wages during~~
28 ~~the taxable year by the qualified employer for services of not less~~
29 ~~than an average of 35 hours per week.~~

30 ~~(B) A qualified employee who was a salaried employee and~~
31 ~~was paid compensation during the taxable year for full-time~~
32 ~~employment, within the meaning of Section 515 of the Labor Code,~~
33 ~~by the qualified employer.~~

34 ~~(3) A "qualified employee" shall not include any of the~~
35 ~~following:~~

36 ~~(A) An employee certified as a qualified employee in an~~
37 ~~enterprise zone designated in accordance with Chapter 12.8~~
38 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
39 ~~Government Code.~~

1 ~~(B) An employee certified as a qualified disadvantaged~~
2 ~~individual in a manufacturing enhancement area designated in~~
3 ~~accordance with Section 7073.8 of the Government Code.~~

4 ~~(C) An employee certified as a qualified employee in a targeted~~
5 ~~tax area designated in accordance with Section 7097 of the~~
6 ~~Government Code.~~

7 ~~(D) An employee certified as a qualified disadvantaged~~
8 ~~individual or a qualified displaced employee in a local agency~~
9 ~~military base recovery area (LAMBRA) designated in accordance~~
10 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
11 ~~7 of Title 1 of the Government Code.~~

12 ~~(E) An employee whose wages are included in calculating any~~
13 ~~other credit allowed under this part.~~

14 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
15 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
16 ~~employees.~~

17 ~~(5) “Qualified wages” means wages subject to Division 6~~
18 ~~(commencing with Section 13000) of the Unemployment Insurance~~
19 ~~Code.~~

20 ~~(6) “Annual full-time equivalent” means either of the following:~~

21 ~~(A) In the case of a full-time employee paid hourly qualified~~
22 ~~wages, “annual full-time equivalent” means the total number of~~
23 ~~hours worked for the taxpayer by the employee (not to exceed~~
24 ~~2,000 hours per employee) divided by 2,000.~~

25 ~~(B) In the case of a salaried full-time employee, “annual~~
26 ~~full-time equivalent” means the total number of weeks worked for~~
27 ~~the taxpayer by the employee divided by 52.~~

28 ~~(e) The net increase in qualified full-time employees of a~~
29 ~~qualified employer shall be determined as provided by this~~
30 ~~subdivision:~~

31 ~~(1) (A) The net increase in qualified full-time employees shall~~
32 ~~be determined on an annual full-time equivalent basis by~~
33 ~~subtracting from the amount determined in subparagraph (C) the~~
34 ~~amount determined in subparagraph (B):~~

35 ~~(B) The total number of qualified full-time employees employed~~
36 ~~in the preceding taxable year by the taxpayer and by any trade or~~
37 ~~business acquired by the taxpayer during the current taxable year.~~

38 ~~(C) The total number of full-time employees employed in the~~
39 ~~current taxable year by the taxpayer and by any trade or business~~
40 ~~acquired during the current taxable year.~~

~~(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.~~

~~(d) In the case where the credit allowed by this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding seven years if necessary, until the credit is exhausted.~~

~~(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.~~

~~(f) For purposes of this section:~~

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) (A) Credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 17053.80 that cumulatively total four hundred million dollars (\$400,000,000) for all taxable years.~~

~~(2) The date a return is received shall be determined by the Franchise Tax Board.~~

~~(3) (A) The determinations of the Franchise Tax Board with respect to the cut-off date, the date a return is received, and whether a return has been timely filed for purposes of this subdivision may not be reviewed in any administrative or judicial proceeding.~~

~~(B) Any disallowance of a credit claimed due to a determination under this subdivision, including the application of the limitation specified in paragraph (1), shall be treated as a mathematical error appearing on the return. Any amount of tax resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.~~

1 ~~(4) The Franchise Tax Board shall periodically provide notice~~
2 ~~on its Web site with respect to the amount of credit under this~~
3 ~~section and Section 17053.80 claimed on timely filed original~~
4 ~~returns received by the Franchise Tax Board.~~

5 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
6 ~~or procedures necessary or appropriate to carry out the purposes~~
7 ~~of this section, including any guidelines regarding the limitation~~
8 ~~on total credits allowable under this section and Section 17053.80~~
9 ~~and guidelines necessary to avoid the application of paragraph (2)~~
10 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
11 ~~tiered ownership structures, or otherwise.~~

12 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
13 ~~Division 3 of Title 2 of the Government Code does not apply to~~
14 ~~any standard, criterion, procedure, determination, rule, notice, or~~
15 ~~guideline established or issued by the Franchise Tax Board~~
16 ~~pursuant to this section.~~

17 ~~(i) This section shall remain in effect only until December 1 of~~
18 ~~the calendar year after the year of the cut-off date, and as of that~~
19 ~~December 1 is repealed.~~

20 ~~SEC. 4. Section 23623 of the Revenue and Taxation Code, as~~
21 ~~added by Section 8 of Chapter 17 of the Third Extraordinary~~
22 ~~Session of the Statutes of 2009, is amended to read:~~

23 23623. (a) (1) For each taxable year beginning on or after
24 January 1, 2009, and before January 1, 2012, there shall be allowed
25 as a credit against the “tax,” as defined in Section 23036, three
26 thousand dollars (\$3,000) for each net increase in qualified
27 full-time employees, as specified in subdivision (c), hired during
28 the taxable year by a qualified employer.

29 (2) For each taxable year beginning on or after January 1,
30 2012, there shall be allowed as a credit against the “tax,” as
31 defined in Section 17039, an amount as specified in subparagraphs
32 (A), (B), and (C) for each net increase in qualified full-time
33 employees, or portion thereof, as specified in subdivision (c), for
34 the taxable year by the qualified employer.

35 (A) For each net increase in qualified full-time employees, or
36 portion thereof, who are paid qualified wages of less than sixteen
37 dollars (\$16) per hour, or an equivalent amount if the qualified
38 wages are paid other than on an hourly basis, four thousand five
39 hundred dollars (\$4,500).

1 (B) For each net increase in qualified full-time employees, or
2 portion thereof, who are paid qualified wages of sixteen dollars
3 (\$16) per hour or more, or an equivalent amount if paid other than
4 on an hourly basis, nine thousand one hundred dollars (\$9,100).

5 (C) If the net increase in qualified full-time employees for a
6 taxable year, as determined under subdivision (c), is less than the
7 sum of the net increase in qualified full-time employees determined
8 under subparagraphs (A) and (B), the amount of credit allowed
9 shall equal the net increase in qualified full-time employees
10 determined under subdivision (c) multiplied by the amount under
11 subparagraph (A) or (B), depending on which net increase in
12 qualified full-time employees calculated under that subparagraph
13 is greater than zero.

14 (D) A credit shall only be allowed if the qualified employer has
15 a net increase in qualified full-time employees for the taxable year,
16 as determined under subdivision (c).

17 (b) For purposes of this section:

18 (1) "Acquired" includes any gift, inheritance, transfer incident
19 to divorce, or any other transfer, whether or not for consideration.

20 (2) "Qualified full-time employee" means:

21 (A) A qualified employee who was paid qualified wages during
22 the taxable year by the qualified employer for services of not less
23 than an average of 35 hours per week.

24 (B) A qualified employee who was a salaried employee and
25 was paid compensation during the taxable year for full-time
26 employment, within the meaning of Section 515 of the Labor Code,
27 by the qualified employer.

28 (3) A "qualified employee" shall not include any of the
29 following:

30 (A) An employee certified as a qualified employee in an
31 enterprise zone designated in accordance with Chapter 12.8
32 (commencing with Section 7070) of Division 7 of Title 1 of the
33 Government Code.

34 (B) An employee certified as a qualified disadvantaged
35 individual in a manufacturing enhancement area designated in
36 accordance with Section 7073.8 of the Government Code.

37 (C) An employee certified as a qualified employee in a targeted
38 tax area designated in accordance with Section 7097 of the
39 Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

~~(4) “Qualified—~~(A) *For taxable years beginning on or after January 1, 2009, and before January 1, 2012, “qualified employer” means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.*

(B) *For taxable years beginning on or after January 1, 2012, “qualified employer” means an employer that as of the last day of the preceding taxable year and the last day of the current taxable year was any of the following:*

(i) *A “disabled veteran business enterprise” as defined in paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code.*

(ii) *A “disadvantaged business enterprise” as defined in subdivision (f) of 2051 of the Public Contract Code.*

(iii) *A “microbusiness” as defined in paragraph (2) of subdivision (d) of Section 14837 of the Government Code.*

(iv) *A “small business” as defined in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.*

(5) “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

(6) “Annual full-time equivalent” means either of the following:

(A) In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed ~~2,000~~ 1,820 hours per employee) divided by ~~2,000~~ 1,820.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a qualified employer shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by

1 subtracting from the amount determined in subparagraph (C) the
2 amount determined in subparagraph (B).

3 (B) The total number of qualified full-time employees employed
4 in the preceding taxable year by the taxpayer and by any trade or
5 business acquired by the taxpayer during the current taxable year.

6 (C) The total number of *qualified* full-time employees employed
7 in the current taxable year by the taxpayer and by any trade or
8 business acquired during the current taxable year.

9 (2) For taxpayers who first commence doing business in this
10 state during the taxable year, the number of *qualified* full-time
11 employees for the immediately preceding prior taxable year shall
12 be zero.

13 (d) In the case where the credit allowed by this section exceeds
14 the “tax,” the excess may be carried over to reduce the “tax” in
15 the following year, and succeeding seven years if necessary, until
16 the credit is exhausted.

17 (e) Any deduction otherwise allowed under this part for qualified
18 wages shall not be reduced by the amount of the credit allowed
19 under this section.

20 (f) For purposes of this section:

21 (1) All employees of the trades or businesses that are treated as
22 related under either Section 267, 318, or 707 of the Internal
23 Revenue Code shall be treated as employed by a single taxpayer.

24 (2) In determining whether the taxpayer has first commenced
25 doing business in this state during the taxable year, the provisions
26 of subdivision—(f) (g) of Section—17276 24416.20, without
27 application of paragraph (7) of that subdivision, shall apply.

28 (g) (1) (A) Credit under this section and Section 17053.80 shall
29 be allowed only for credits claimed on timely filed original returns
30 received by the Franchise Tax Board on or before the cut-off date
31 established by the Franchise Tax Board.

32 (B) For purposes of this paragraph, the cut-off date shall be the
33 last day of the calendar quarter within which the Franchise Tax
34 Board estimates it will have received timely filed original returns
35 claiming credits under this section and Section 17053.80 that
36 cumulatively total four hundred million dollars (\$400,000,000)
37 for all taxable years.

38 (2) The date a return is received shall be determined by the
39 Franchise Tax Board.

1 (3) (A) The determinations of the Franchise Tax Board with
2 respect to the cut-off date, the date a return is received, and whether
3 a return has been timely filed for purposes of this subdivision may
4 not be reviewed in any administrative or judicial proceeding.

5 (B) Any disallowance of a credit claimed due to a determination
6 under this subdivision, including the application of the limitation
7 specified in paragraph (1), shall be treated as a mathematical error
8 appearing on the return. Any amount of tax resulting from such
9 disallowance may be assessed by the Franchise Tax Board in the
10 same manner as provided by Section 19051.

11 (4) The Franchise Tax Board shall periodically provide notice
12 on its *Internet* Web site with respect to the amount of credit under
13 this section and Section 17053.80 claimed on timely filed original
14 returns received by the Franchise Tax Board.

15 (h) (1) The Franchise Tax Board may prescribe rules,
16 guidelines, or procedures necessary or appropriate to carry out the
17 purposes of this section, including any guidelines regarding the
18 limitation on total credits allowable under this section and Section
19 17053.80 and guidelines necessary to avoid the application of
20 paragraph (2) of subdivision (f) through split-ups, shell
21 corporations, partnerships, tiered ownership structures, or
22 otherwise.

23 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
24 Division 3 of Title 2 of the Government Code does not apply to
25 any standard, criterion, procedure, determination, rule, notice, or
26 guideline established or issued by the Franchise Tax Board
27 pursuant to this section.

28 (i) This section shall remain in effect only until December 1 of
29 the calendar year after the year of the cut-off date, and as of that
30 December 1 is repealed.

31 *SEC. 5. This act provides for a tax levy within the meaning of*
32 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Assembly, March 29, 2011. (JR11)**

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